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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 256

STATE OF INDIANA ON THE RELATION OF DOROTHY ANDERSON,

Petitioner,

vs.

HARRY BRAND, TRUSTEE OF CHESTER SCHOOL TOWNSHIP OF WABASH COUNTY, INDIANA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA AND BRIEF IN SUPPORT THEREOF.

FRANKLIN W. PLUMMER,
Wabash, Indiana;
HOWARD E. PLUMMER,
Wabash, Indiana;
THOMAS F. O'MARA,
315 Grand Opera Bldg.,
Terre Haute, Indiana;
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 256

STATE OF INDIANA ON THE RELATION OF DOROTHY ANDERSON,

Petitioner,

vs.

HARRY BRAND, TRUSTEE OF CHESTER SCHOOL TOWNSHIP OF WABASH COUNTY, INDIANA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF INDIANA.

To the Honorable Charles Evans Hughes, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Dorothy Anderson, relatrix in the above entitled cause, shows:

I.

Summary Statement of the Matter Involved.

The petitioner, as relatrix, filed in the Wabash Circuit Court in Wabash County, Indiana, an action in mandate against one Walter E. Boyer, then Trustee of Chester School

Township, the present respondent Harry Brand, Trustee, being thereafter duly substituted as defendant in the original Court to compel the Trustee to continue the employment of the petitioner as a permanent teacher in said school township (R. 4). Petitioner's complaint alleged her qualifications and her employment beginning in 1924 continuously thereafter in the same school township and her continuous employment as a permanent teacher under the Teachers' Tenure Act of the General Assembly of Indiana for 1927, Chapter 97, Section 1, page 259 of the Indiana Acts of 1927 (Burns' Ind. Stats. Ann. Supp. of 1929, Section 6967.1). The last of her consecutive annual contracts being made for the school year 1932-1933. This complaint alleged that respondent was wrongfully refusing to recognize petitioner's contract of employment under said Act (R. 1).

The complaint further alleged that the contracts between petitioner and respondent for the school year 1931-1932 and 1932-1933 contained the following clause:

> "It is further agreed by the contracting parties that all of the provisions of the Teachers' Tenure Act, approved March 8, 1927, shall be in full force and effect in this contract" (R. 1).

Section 1 of the Teachers' Tenure Act of 1927 (Section 1, Chapter 97, Indiana Acts of 1927, beginning page 259, Burns' Ind. Stats. Anno. Supp. of 1929, Section 6967.1) provided as follows:

> "That any person who has served or who shall serve under a contract as a teacher in any school corporation in the State of Indiana for five or more successive years and who shall hereafter enter into a teachers' contract for further services with such corporation, shall thereupon become a permanent teacher of such corporation."

And further provided that:

> "Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract to remain in force unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in Section 2 of this Act."

Section 2 of this Act provided that only for certain enumerated reasons, and only after notice and hearing, could a permanent teacher's contract be cancelled. Section 4 of this Act provided under penalty of suspension of a permanent teacher's license that a permanent teacher could not herself cancel the contract during the school term or for a period of 30 days previous thereto except by mutual agreement and at other times during vacation only by five days notice.

As originally enacted in 1927 said Act expressly applied to permanent teachers' contracts in all school corporations, including township school corporations.

Prior to any amendment of the Teachers' Tenure Act of 1927, and prior to the school year of 1932-1933, the Supreme Court of Indiana, on March 28, 1932, in the case of *Elwood* v. *State ex rel. Griffin*, 203 Ind. 626, construed Section 1 of Chapter 97 of the said Act of 1927, as follows:

> "The position of a teacher in the public schools is not a public office but an employment by contract between the teacher and the school corporation. The relation remains contractual after the teacher has, under the provisions of the Teachers' Tenure Law, become a permanent teacher * * * but the terms and conditions of the contract are thereafter governed primarily by the statute."

Respondent demurred to this complaint for want of sufficient facts insisting upon the abrogation of petitioner's

contract by Section 1 of Chapter 116, beginning 716 Indiana Acts of 1933 (Burns' Ind. Stats. Ann. 1933, Section 28-4307), which amended section 1 of chapter 97 of said Act of 1927 (Burns' Ind. Stats. Ann. Supp. of 1929, Section 6967.1) by omitting therefrom all reference to school township corporation, but retaining all other school corporations within its terms. This amendatory Act of 1933 made no other material change, and went into effect by Proclamation of the Governor on May 22, 1933 (R. 5-7).

The Wabash Circuit Court sustained respondent's demurrer on March 24, 1934, petitioner excepting (R. 7).

Judgment was thereupon rendered against petitioner on demurrer that she take nothing by her action (R. 7). Petitioner duly appealed from this judgment to the Supreme Court of Indiana on April 18, 1934, and the cause was submitted on May 18, 1934, the only error assigned being error in sustaining respondents demurrer (R. 12). On January 14, 1937, the Supreme Court of Indiana affirmed the judgment of the Wabash Circuit Court in a majority opinion reported in 5 N. E. (2d) p. 531 (no official report thereof having been yet published). On April 27, 1937, the Supreme Court of Indiana denied petitioner's petition for rehearing and finally affirmed said judgment and a mandate of affirmance was accordingly issued to the Wabash Circuit Court on April 27, 1937. The majority opinion upon rehearing appears in volume 7 N. E. (2d) p. 777, and the dissenting opinion of Judge Treanor upon the original hearing in volume 5 N. E. (2d) 913, no official reports of said opinion having been yet published. (First majority opinion, R. 13-15; majority opinion on rehearing R. 31-34; dissenting opinion, R. 15-28.)

A written order signed by the Chief Justice and all the Judges of the Supreme Court of Indiana was entered in

said cause, the material portion of said order reading as follows:

> "It is ordered that the following entry be made upon the order book of this court respecting the above entitled cause.
>
> "The original opinion contains the following statement: 'A demurrer to the complaint was sustained. The relatrix contends that this was error; that, having become a permanent teacher under the Teachers' Tenure Law before the amendment, she has a vested property right in her indefinite contract, which may not be impaired under the Constitution.'
>
> "In this opinion, the word 'Constitution' referred to, and was intended to mean, article 1, section 10, of the Constitution of the United States of America" (R. 34).

Contrary to the contentions of the petitioner, the Supreme Court of Indiana in this cause held that petitioner's employment-relationship under her indefinite contract as a permanent teacher under Section 1 of the Teachers' Tenure Act of 1927 was not contractual; that it constituted only a privilege or preferential right to continue in the employment of the school township; that Section 1 of the amendatory Act of 1933 had the effect of repealing so much of Section 1 of the Teachers' Tenure Act of 1927 as authorized her continuous employment thereunder and that her previously existing employment-relationship was thereby abrogated; that the petitioner had no vested property right in her permanent teachers' contract under Section 1 of the Acts of 1927, and that her right to continue in the employment of Chester School Township as a permanent teacher derived and based upon the clause in Article 1, Section 10 of the Constitution of the United States forbidding any State to pass a law impairing the obligation of contracts was not impaired by the enactment of section 1 of the amendatory Act of 1933 abrogating her employment-relationship as a permanent teacher.

II.

Reasons Relied on for the Allowance of the Writ.

(1). In this cause there was specially claimed by the petitioner her right, derived from and based upon the provision of Article 1, Section 10 of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts, to continue to hold, enjoy, and enforce her contract as a permanent teacher with Chester School Township, of which respondent was trustee, under Section 1, Chapter 97 of the Acts of the General Assembly of Indiana of 1927, notwithstanding the enactment of Section 1 of Chapter 116 of the Indiana Acts of 1933 construed by the Supreme Court of Indiana in this cause to apply to and abrogate the petitioner's contract as aforesaid, which claim of the petitioner was erroneously ruled against and denied in the judgment of said court herein.

(2) In this cause there was specially claimed by this petitioner a vested property right in her indefinite contract as a permanent teacher with Chester School Township, under Section 1, Chapter 97, of the Acts of the General Assembly of 1927, and the further right, based upon the provision of Article 1, Section 10, of the Constitution of the United States that no State shall pass any law impairing the obligation of contracts, to continue to hold, enjoy, and enforce said vested right, and that the said right to continue to hold, enjoy, and enforce said contract was abrogated by Section 1 of Chapter 116 of the Acts of the General Assembly of Indiana of 1933 in violation of said clause of Article 1, Section 10, of the Constitution of the United States, and each of said claims of this petitioner was erroneously overruled and denied by the judgment of the Supreme Court of the State of Indiana.

(3) In said cause there was drawn in question the validity of Section 1 of Chapter 116 of the Acts of the General Assembly of Indiana of 1933 as being repugnant to the provisions of Article 1, Section 10 of the Constitution of the

United States that no State shall pass any law impairing the obligation of contracts, the validity of which Act was erroneously sustained by the Supreme Court of Indiana in its judgment in said cause.

WHEREFORE your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of Indiana, commanding said court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said Supreme Court of Indiana had in the case numbered and entitled on its docket, No. 26560, State of Indiana on the relation of Dorothy Anderson, appellant v. Harry Brand, Trustee of Chester School Township of Wabash County, Indiana, appellee, to the end that this cause may be reviewed and determined by the Court as provided by the statutes of the United States; and that the judgment herein of said Supreme Court of Indiana be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated July 14, 1937.

DOROTHY ANDERSON, Relatrix,
Petitioner Herein,
By FRANKLIN W. PLUMMER,
Wabash, Indiana;
HOWARD E. PLUMMER,
Wabash, Indiana;
THOMAS F. O'MARA,
315 Grand Opera Bldg.,
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Terre Haute, Indiana;
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Richmond, Indiana,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937.

No. 256.

STATE OF INDIANA ON THE RELATION OF DOROTHY ANDERSON,

Petitioner,

vs.

HARRY BRAND, TRUSTEE OF CHESTER SCHOOL TOWNSHIP, WABASH COUNTY, INDIANA.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Jurisdiction.

The judgment of the Supreme Court of Indiana affirming the judgment of the trial court that petitioner take nothing by her complaint was rendered on January 14, 1937. A petition for rehearing was seasonably filed and considered by the Supreme Court and denied with an additional opinion on April 27, 1937, and a mandate accordingly issued on April 27, 1937.

The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, Amended Subsection b (Section 344, 28 U. S. C. A.).

Under part II of the foregoing petition for writ of certiorari there are set out in the petition herein reasons (1) and (2) setting forth a right of the petitioner derived from and based upon the contract clause of Article 1, Section 10 of the Constitution of the United States to continue to hold and enjoy petitioner's contract as a permanent teacher under the provisions of Section 1 of Chapter 97 of the Acts of the General Assembly of Indiana of 1927 (Burns' Ann. Ind. Stat. Supp. of 1929, Section 6967.1) (as against impairment by Section 1 of Chapter 116, Indiana Acts of 1933, page 716, Burns' Ann. Ind. Stat. 1933, Section 28-4307), which right was denied by the decision of the court below; also reason (3) to the effect that the validity of Section 1 of Chapter 116 of the Indiana Acts of 1933 (Burns' Ind. Stat. Ann. 1933, Section 28-4307) was drawn in question as being repugnant to the contract clause of Article I, Section 10 of the Constitution of the United States.

Reference is made to the certificate signed by all the judges of the Supreme Court made a part of the record clarifying the original opinion of the Court and quoted in the Petition, *supra*, under II, Summary Statement of the Matter Involved. This, of course, became a part of the opinion of the Court.

Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Co. v. *George W. Bay and William Bay*, 200 U. S. 179, 182;

Consolidated Turnpike Company v. *Norfolk & Ocean View Railway Company*, 228 U. S. 596, 599;

Charlotte Anita Whitney v. *People of the State of California*, 274 U. S. 357, 360, 362;

International Steel & Iron Company v. *National Surety Company*, 297 U. S. 657.

In this cause the foregoing substantial Federal questions were necesarily, as well as expressly involved and decided.

These questions have not been determined theretofore by this Court, and especially have not been determined by *Phelps* v. *Board of Education of the Town of West New York; Askam* v. *Board of Education of West New York,* both decided by this Court March 1, 1937, 57 S. Ct. 483, as appears upon a comparison of Sections 1 and 2 of the Indiana Teachers' Tenure Act of 1927 (Sections 1 and 2, Chapter 97, Indiana Acts of 1927, pp. 259 and 260) (Burns' Ann. Ind. Stat. Supp. of 1929, Section 6967.1-2) with Section 1 of Chapter 243 N. J. Laws 1909, Pamph. L., page 398 (4 N. E. Comp. Laws 1933, Pamph. L., page 24) the latter being the statute considered and construed in these cases. This comparison is developed in the argument below under (1).

II.

The Statement of the Case.

The Court is respectfully referred to the *Statement of the Case* under that heading in I of the foregoing petition for the writ of certiorari. We wish to state, however, that this Act involves the question whether a tenure teacher's contract, under the Act of the General Assembly of Indiana of 1927, Chapter 97, Sections 1 and 2, commonly known as Indiana Teachers' Tenure Act of 1927, is protected against impairment by a repealing statute, construed to abrogate pre-existing contracts. The question is of great public interest owing to the prevalence of a teachers' tenure system throughout the State of Indiana explicitly based upon contracts and also on account of the prevalence of such a system in the State of Wisconsin in which heretofore the Teachers' Tenure Law has been protected against impairment under the contract clause of the Constitution of the State of Wisconsin as decided in *State ex rel. Nyberg* v. *Board of Directors of Milwaukee,* 190 Wis. 570.

III.

Summary of Argument.

(1) The cases of *Phelps* v. *Board of Education of West New York; Askam* v. *Same,* companion cases reported in 57 Sup. Ct. Rep., p. 483, do not foreclose consideration of this cause, because of the essential differences between the New Jersey statute considered in these cases and the Indiana Teachers' Tenure Act, in that the former is not grounded on a contractual relationship, while the Indiana statute is expressly grounded on a contractual relationship and expressly provides for the continuance of the contract as such. A further difference consists in the requirement of the Indiana Statutes that all employment of public school teachers shall be by written contract, and in the previous court decisions of the latter state treating the teacher's employment relationship as contractual. There was no similar previous statutory or administrative history in New Jersey.

(2) This Court is not bound by the construction accorded to the Indiana Teachers' Tenure Act of 1927. The lower court erroneously construed this Act in holding that the permanent teacher's employment under this Act was not contractual. In so doing the Supreme Court overruled its previous decisions construing the same to give rise to a contract when imported into the teacher's contract thereunder. These former interpretations of the Act occurred prior to the amending Act of 1933 which literally preserved the language of the former Act expressly declaring that when a teacher made a contract for the sixth consecutive year that contract should remain in effect until cancelled. The amendatory Act of 1933 necessarily re-enacted this previous construction by keeping literally intact all the language of the 1927 Act and merely omitted therefrom

township school corporations, the class of school corporations to which respondent's corporation belonged.

The entire previous statutory and judicial history of the Indiana School System reveals the consistent treatment of the teacher's employment relationship as contractual.

The plain wording of the Act of 1927 and its persistent employment of the word "contract" throughout its text was not given effect in the court's construction of the Act, although a statutory rule of the constitution in Indiana so requires. The court also failed to observe that the "permanent" or "indefinite contract" is consensually initiated and contains every element of a contract in the true sense of the word.

(3) The court below erred in holding the petitioner's contract not entitled to protection against impairment under the contract clause of Article I, Section 10 of the Federal Constitution. The contract was mutually binding and consisted of the statute embodied therein by express reference and the previous construction thereof.

The court below declared that township school corporations were omitted from the amendatory Act of 1933 to accomplish a change in the policy of the 1927 Act and had the effect of abrogating petitioner's contract. But under *Coombes* v. *Getz*, 285 U. S. 434, 442, petitioner's contract had acquired an independent existence and was protected under the contract clause.

Under the terms of the Act of 1927 petitioner's contract could after notice and hearing be cancelled for every conceivable reason affecting the public interest. The elimination of the provision for notice and hearing and the provision prohibiting dismissal for personal and political reasons was the only net effect achieved by the amendatory Act. These considerations could not support the abrogation of the contract as a valid exercise of the police power. In

fact the Act merely effected a change of conveniences and did not accomplish a discernible public purpose. The petitioner's contract is a valuable right representing the investment of personal talent and educational work on the teacher's part, and is entitled to the same protection against impairment although equally subject to regulative legislation as a public franchise. Otherwise a permanent teachers' tenure system is essentially impossible because of the alleged disability of the State to bind itself permanently. The police power so construed achieves an incapacity on the part of the State to accomplish a desirable public purpose. The balance of social values in this case clearly supports the application of the contract clause.

(4) The repealing or amendatory Act of 1933 was unconsitutional being in conflict with the contract clause of Article I, Section 10 of the Federal Constitution for reasons given under (3) above.

IV.

ARGUMENT.

1. The Federal questions involved in the present case were not determined in the Phelps v. Board of Education of West New York—Askam v. Board of Education of West New York, 57 Sup. Ct. Rep. 483.

We set out Sections 1 and 2 of the Indiana Teachers' Tenure Act of 1927 forming the basis of petitioner's contract, in Appendix A of this brief, and the pertinent section of the New Jersey act considered in the cases just mentioned, in Appendix B.

The New Jersey Act purports upon its face to be a mere direction to school officials relative to the reduction of salaries of tenure teachers and their dismissal. It discloses no concept of a contractual nature.

There was no legislative, administrative, or judicial experience in New Jersey showing that the relationship of teachers to school corporations was in that State considered or treated as contractual.

In strong contrast are the provisions of Sections 1 and 2 of the Indiana Teachers' Tenure Act of 1927. The language employed is repetitious in the use of the word "contract." Section 1 expressly declares:

> "Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties, or unless it shall be cancelled as provided in Section 2 of this Act."

Many decisions of the appellate tribunals in Indiana prior to 1927 recognized a teacher's employment as contractual, and entertained and enforced actions on contract for their breach.

Harrison School Tp. v. *McGregor*, 96 Ind. 185;
Kiefer v. *Troy School Tp.*, 102 Ind. 279;
Morrison v. *McFarland*, 51 Ind. 206;
Schwier v. *Zitike*, 136 Ind. 210;
Charlestown School Tp. v. *Hays*, 74 Ind. 127;
Sparta School Tp. v. *Mendell*, 138 Ind. 188 (37 N. E. 1059).

In *Elwood* v. *State ex rel. Griffin*, 203 Ind. 626, 634, the Supreme Court of Indiana declared:

> "The position of a teacher in the public schools is not a public office, but an employment by contract between the teacher and the school corporation. The relation remains contractual after the teacher has, under the provisions of a Teachers' Tenure Law, become a permanent teacher—but the terms and conditions of

the contract are thereafter governed primarily by the statute."

This case was decided March 29, 1932, before the beginning of the last school year for which petitioner had a written contract, namely 1932-1933, and before the Amendatory Act of 1933, Section 1, Chapter 116, Acts of 1933, page 716, was enacted.

All the decisions of appellate tribunals of Indiana prior to the decision of the Supreme Court in the present proceeding treated and considered the teacher's relationship of employment under the Act of 1927 as a contract and enforced the collection of salary thereunder and enforced the continuance of the employment by mandate. These decisions are:

State ex rel. Clark v. *Stout,* 206 Ind. 58 (187 N. E. 267);
Kostanzer v. *State ex rel. Ramsey,* 205 Ind. 536 (187 N. E. 337);
State ex rel. Black v. *Board of School Comrs.,* 205 Ind. 582 (187 N. E. 392);
Barnes v. *Mendenhall,* 98 Ind. App. 229 (183 N. E. 556);
School City of Elwood v. *State ex rel. Griffin,* 203 Ind. 626 (180 N. E. 471);
School City of Evansville v. *Culver,* 94 Ind. App. 692 (182 N. E. 270).

The history of school legislation in Indiana reflects a contractual concept of the relationship of a teacher employed by a school corporation.

Act March 5, 1855, Chapter 148, Section 107 (*Gaven* v. *Hord,* Indiana Statutes 1860);
Act March 6, 1865, page 3, Section 28, Burns' 1881, Section 4501;
Act March 3, 1871, Chapter 25, Section 5, clause 5, pp. 20-22.

Act March 8, 1873, Chapter 25, page 75, Section 9, providing:

> "The Township Trustee shall specify, in a written contract with each teacher that such teacher shall attend the full session of each institute."

Acts of 1899, page 173, Sections 1, 2, re-enacted, Chapter 91, Section 1 Acts of 1921 (Burns' Ind. Stats. Ann. 1933, Sections 28-4304).

> "That all contracts hereafter made by and between teachers and school corporations of the state of Indiana shall be in writing, signed by the parties to be charged thereby, and no action shall be brought upon any contract not made in conformity to the provisions of this Act."

Prior to the Act of 1899 verbal contracts were enforceable.

Jackson Township v. *Shera,* 8 Ind. App. 330.

This Court in considering the New Jersey statute declared; "we find nothing in the record to indicate that the board is bound by contract with the teacher for more than the current year" (p. 485), and also commented on the practice in that State of no specific contracts being made under the statute in question.

These points of contrast with the Indiana Statute are further developed in the discussion next following. It should be observed that the Supreme Court of Wisconsin in *State ex rel. Nyberg* v. *Milwaukee,* 190 Wis. 570, sustained a tenure teacher's contract under the contract clause of the Wisconsin State Constitution against the repeal of the Tenure Act largely because the tenure status was based upon the employment proper of the teacher, although this employment feature of the Wisconsin Act is not nearly as strong and obvious as in the Indiana Act.

2. The court erred in holding that the employment relationship existing by virtue of petitioner's indefinite contract under Section 1 of the Teachers' Tenure Act of 1927 was not a contract.

It is elementary that this Court is not bound by the construction given to a State statute by the highest court of a State, where the contract clause of the Federal Constitution is involved, and in such cases this Court will determine for itself the proper construction of the statute. The same rule applies to the existence and terms of a contract, the obligation of which is asserted to be impaired.

Phelps v. *Board of Education of the Town of West New York, supra;*

Coombes v. *Getz,* 285 U. S. 434, 441, and cases there cited;

Appleby v. City of New York, 271 U. S. 364, 379, 380;

Tidal Oil Company v. *Flanagan,* 263 U. S. 444, 451.

The view of the State Supreme Court in this cause repudiates the previous decisions of the various appellate tribunals of Indiana, including *Elwood* v. *State ex rel. Griffin, supra,* decided by the Supreme Court on March 29, 1932; *Kostanzer* v. *State ex rel. Ramsey, supra,* decided Nov. 2, 1933, and *State ex rel. Black* v. *Board of School Commissioners, supra,* decided Nov. 3, 1933. The present view of the Indiana Supreme Court is also inconsistent with the historic and traditional administrative practice of the State under the Indiana statutes cited under III (1), *supra,* in this brief. Particularly does the statutory requirement that all contracts of teachers shall be in writing, now in force in the State for over 35 years, strongly support the petitioner's contention of the contractual nature of the employment expressly designated a "contract" in the Act of 1927.

A statute of long standing, Burns' Ind. Stat. Ann. 1933 (1852) Section 1-201, First Clause, prescribes as a rule for

the construction of all statutes that "words and phrases shall be taken in their plain, or ordinary and usual sense." Much force is properly attributable to the repeated use of the word "contract," occurring ten times in Section 1 and eleven times in Section 2 of the Act of 1927.

The contract of employment is consensually initiated under Section 1 of this Act. It provides "any person who has served or who shall serve under contract as a teacher * * * for five or more successive years, and who shall thereafter enter into a teacher's contract for further service with such corporation shall thereupon become a permanent teacher of such school corporation." The act therefore expressly provides that the very execution of the teacher's contract for the sixth consecutive year has the instantaneous effect of constituting the teacher a permanent teacher of the school corporation indefinitely thereafter. In the succeeding sentence the legislature itself declares the contractual effect of entering into the contract for the sixth consecutive year. "Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue for an indefinite period and be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract or unless it is cancelled as provided in Section 2 of this Act." * * *

Both parties know at the time of the inception of the teacher's contract for the sixth consecutive year, that each party is bound indefinitely thereby until the contract is cancelled in compliance with the requirements of the Act. The consequences resulting from this act of the parties enters into the consent given to the contract. The contract is a composite of the consensual acts of the parties and the provisions of the law. Petitioner's contract expressly made the provisions of this act a part thereof.

Such a contract had ample consideration. The teacher's right of cancellation was entirely inhibited under Section 4 of the Act during the entire school year and for thirty days preceding the beginning of the school year, and, during the remainder of vacation the teacher's right of cancellation required five day's notice. The teacher's wrongful concellation was punished by forfeiture of her license for 1 year. The school corporation surrendered the right of cancellation except when exercised within the restrictions of Section 2, requiring notice and hearing, and in no case for personal or political reasons.

The Amendatory Act took effect May 22, 1933, the *Elwood* case having been decided in March 1932, previous to the end of the school year 1931-1932, and long before the time had arrived for making petitioner's contract for the school year 1932-1933.

After this construction of Section 1 of the 1927 Act by the State Supreme Court in *Elwood* v. *State ex rel. Griffin,* 203 Ind. 626, the Legislature re-enacted in the Amendatory Act of 1933 literally all of the language so construed, which was descriptive of the contract, and of the continuing effect of the contract of employment entered into for the sixth consecutive year. The rule in Indiana as to the re-enactment of an Act previously construed is very strong and is thus stated in *Barr v. Sumner,* 183 Ind. 402, 409:

> "The re-enactments, under the circumstances, adopted the previous constructions of the Act by this Court. State *vs.* Ensley (1912) 177 Ind. 483, 97 N. E. 113, Ann. Cas. 1914 D 1306. Were we of the opinion that all those consistent decisions are erroneous all would be without rightful authority to overrule them, because this court is vested with no legislative power."

This Court would be readily justified in holding the petitioner's employment a contract under the *Elwood* case, *supra,* in view of this re-enactment and the necessary effect

of the same upon the construction of the Act of 1927. When the lower court construed the Act of 1927 on January 14, 1937, in petitioner's case, the question was no longer an open one under the settled rules of statutory construction. While the Act of 1933 could have no effect as such upon a previous contract, it undoubtedly had the effect of confirming the previous judicial construction of the language re-enacted.

Section 2 of the Act provides for cancellation for cause after hearing and that except where the cause is immorality or insubordination the cancellation shall go into effect at the end of the school term following. This would be absurd, if the contract were merely from year to year as held in the majority opinion below.

All the elements required to constitute a contract are present in the employment relationship under this Act, such as competent parties, subject-matter, a legal consideration, mutuality of agreement and of obligation. In *Haskell & Barker Car Company* v. *Allegheny Forging Company*, 47 Ind. App. 392, 394, 395, these were held to be the requisites of a legal contract. The presence of all these elements is not questioned in the majority opinions below, except it is intimated in the majority opinions below that the element of mutuality is lacking. The court below said on rehearing: "The teacher may terminate the tenure at any time, except during the school year and for thirty days previous to its beginning by giving five days notice." The court below referred to want of mutuality in contracts for personal service at common law. But the court disregarded the plain provision that the statute here was itself prescribing the terms of the contract and created a limited right of cancellation in each party thereto. Certainly the policy and effect of the statute cannot be nullified by a non-statutory rule.

The court's reference in the first majority opinion to the proposition contended for by the school corporation in

Kostanzer v. *State ex rel. Ramsey*, 205 Ind. 536, 548, that the contract was not binding on it because not binding on both parties was there answered by the Court as follows:

> "But there is nothing in the law of contracts to prevent one party to a contract granting to the other the privilege of rescission or cancellation on terms not reserved to the former party. The local school corporations are agents of the state, * * * and the General Assembly has power to prescribe the terms of the contract to be executed by these agents." Page 548.

The opinion in the *Kostanzer* case thus distinctly holds the limited cancellation privilege does not destroy the existence of the contractual relationship resulting from accepting the terms of the statute. This seems the sounder construction.

The remarks of the court in the first majority opinion that "the contract is variable as to compensation" is a misreading of a proviso in Section 1 of the 1927 Act which declares: "that teachers' contracts may contain provisions for fixing the amount of annual compensation from year to year by a salary schedule adopted by the school corporation, and such schedule shall be deemed to be a part of such contract." Of course this would not apply unless the teacher's written contract which was carried forward as an indefinite contract specifically provided for an annual salary schedule. Where such a provision was contained in the contract as to the future annual compensation, it would merely be a case of *Id certum est quod certum reddi potest.* A public act of a general nature, namely, the adoption annually by a public school corporation of a schedule, presumably general in its application, would definitely fix the compensation. Also the Indiana Teachers' Minimum Wage Act (as amended Special Session of 1920, Chapter 56, Section 1. Indiana Acts of 1920, page 194, Burns' Ind. Stats. Ann. 1933, Section 28-4314) fixes an irreducible minimum wage. This Act appears below in Appendix D.

The use of the word "indefinite" in characterizing the contract offers no difficulties, and does not vitiate the certainty of its terms. It has reference merely to the prospective duration of the relationship in view of the mode and reasons definitely prescribed for its termination. It is analogous to the indeterminate franchise of a public service corporation.

Thus no convincing reason appears against the essentially contractual nature of the employment relationship under the Teachers' Tenure Act of 1927.

3. The court below erred in denying the right claimed by petitioner based upon the contract clause of the Federal Constitution to continue to hold, enjoy and enforce her subsisting permanent teacher's contract consisting of the provisions of the Act of 1927 and her written contract, notwithstanding the repealing effect given to the Amendatory Act of 1933.

It is indisputable that a contract may consist of the provisions of a statute, the acceptance of the terms of the statute and the judicial construction thereof prevailing at the time of such acceptance.

New Jersey v. *Yard*, 95 U. S. 110, 114;
Douglass v. *Pike County*, 101 U. S. 679, 686;
Worthen Co. ex rel. Board of Commissioners of Street Improvement District v. *Kavanaugh*, 295 U. S. 56, 60.

The obligation of such a contract, even if a State is a party thereto can not be impaired under the contract clause.

Hall v. *Wisconsin*, 103 U. S. 5, 10, 11;
Yard v. *New Jersey*, *supra*;
Woodruff v. *Trapnall*, 10 How. 190, 196.

Section 1 of the Amendatory Act of 1933 is substantially identical with Section 1 of the 1927 Act, except instead of the phrase "in any school corporation" there was substituted

the phrase "in any school city corporation or in any school town corporation." The effect was to delete school township corporations from the amended Act. While there can be no doubt that this inhibited the making of permanent teacher contracts thereafter, the Court below construed the Amendatory Act to apply to the employment-relationship of permanent teachers existing at the time of the enactment of the Amendatory Act, for the Court said in its first majority opinion:

> "The repeal of the statute, in so far as it affects townships and township schools, removes the restriction upon the power of the school corporation so far as it affects the preferential or so-called tenure rights of teachers, and leaves the township officers free to renew teachers' contracts or not as may be deemed expedient."

A more correct view was given of a closely analogous situation by this Court in *Coombes* v. *Getz*, 285 U. S. 434, 442, as to the repealed provision of the Constitution of California imposing liability upon corporate stockholders. There this Court said: "His (petitioner's) cause of action was not purely statutory. It did not arise upon the constitutional rule of law, but upon the contractual liability created in pursuance of the rule. Although the latter derived its being from the former, it immediately acquired an independent existence competent to survive the destruction of the provision which gave it birth. The repeal put an end to the rule for the future, but did not and could not destroy or impair the previously vested right of the creditor which in every sense was a property right." Similarly petitioner's indefinite contract as a permanent teacher survived, as an independent entity, the statute which authorized its inception.

A contract for personal services is protected by the contract clause. *Hall* v. *Wisconsin, supra*, held a contract for

engineering services was protected against impairment by the repeal of the statute authorizing the employment by the State while the contract remained in part unperformed. This Court in *Long Island Supply Co.* v. *Brooklyn Trust & Guaranty Co.*, 166 U. S. 685, 690, 691, commented on *Hall* v. *Wisconsin* as follows:

> "Its condemnation is of course subject to the rule of just compensation, and that is all that is implied in the decisions such as Hall *v.* Wisconsin, 103 U. S. 5 (26:302), cited by counsel. In that case it appeared that Hall had a contract with the State for services entered into in pursuance of a statute, that he performed the services, but that before finishing his work the legislature repealed the statute authorizing the contract. It was held that he was nevertheless entitled to his stipulated compensation. The Act of the legislature in the repeal was not one providing for condemnation, and in so far as it partook of the nature of a condemnation it ignored the obligation of just compensation and was therefore void; but it was not held that, if just compensation had been provided and a public use required, the contract might not have been condemned."

Under these authorities it is quite clear that there was involved in the cause below a contract of the petitioner with the school township within the meaning of the contract clause of the Constitution, and under the reasoning in *Coombes* v. *Getz, supra,* the effect given by the Supreme Court of Indiana in its decision to the amendatory Act constitutes an impairment of petitioner's contract, under the contract clause of Article 1, Section 10 of the Constitution of the United States.

It only remains to examine the justification attempted by the court below in support of the denial of petitioner's constitutional right against abrogation by the amendatory act as construed by the court. The court below declared in its first majority opinion:

> "These are matters of public policy, of purely governmental concern in which the legislative power cannot be exhausted, or consumed, or contracted away so as to limit the discretion of future Legislatures" (R. 15).

Again in the majority opinion upon rehearing the court says:

> "The right to control public policy, in respect to the management and operation of schools cannot be contracted away by one Legislature so as to fix a permanent public policy unchangeable by succeeding Legislatures" (R. 32).

From the foregoing, it must be observed that the Supreme Court did not itself predicate the abrogation of pre-existing permanent teachers' contracts by the amendatory act of 1933 upon the police power of the State as such. The majority opinions indicated that it was a mere change of policy on the part of the Legislature. The opinions indicate no evil thereby remedied or any object of public health or morals or welfare thereby achieved.

Indeed an analysis of the situation discloses that the Legislature had changed its mind with reference to the value or the advantage of permanent indefinite teachers' contracts in the rural schools, although it was formerly of the opinion that these contracts were to the advantage of the State in rural schools as well as in town and city schools. Clearly there was no evil in these contracts as such because they are still retained under the amendatory act in town and city schools. The case seems to fall within the principle laid down in *Grand Trunk Western Railroad Company* v. *South Bend*, 227 U. S. 544, 555, where the court observed with reference to the franchise under consideration that "there was nothing contrary to public policy in any of its terms and being valid and innocuous the police power could not be invoked to abrogate it as a

whole or to impair it in part." Observing also that at the time of the inception of the franchise "the municipal authorities were obliged to balance the present and prospective inconveniences of having trains operated through its streets against the advantage of having the railroad accessible to its citizens," the court declared:

> "If the police power can lay hold of such inconveniences and make them the basis of a right to repeal such an ordinance, the contract would be abrogated because of the very growth in the population and business the Railroad was intended to secure."

Prior to the Teachers' Tenure Act of 1927, except to the extent a written contract might otherwise require, the school corporation could for political and personal or other reasons, discharge a teacher during the contract year, but it was subject to court determination as to truth of the facts constituting the cause for discharge.

Hays v. *City of Crawfordsville*, 42 Ind. 200.

Under the express provision of Section 2 of the Act of 1927, the determination of the school board as to the facts constituting the cause for discharge, after hearing and notice, was final except for fraud and arbitrary denial of hearing. Under Section 2 of the Tenure Act, also certain causes for discharge were enumerated; "Incompetency, insubordination (which shall be deemed to mean a refusal to obey the school laws of this State, or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons."

Consequently, when the Legislature, as a matter of public policy, according to the majority opinions, abrogated petitioner's contract, it was a mere choice of convenience of

the one form of the contract over the other, and not in consideration of the public welfare or the remedying of any wrong or the abolition of any evil. As construed by the Supreme Court of Indiana, the Amendatory Act was not only an inhibition of the formation of such contracts in the future, but the doom of the Act is levelled directly at existing contracts. This distinguishes the present case from those cases which have held that the contract clause does not protect pre-existing contracts where, as incidental to the operation of a valid law under the police power to remedy a declared evil or to meet a sudden emergency, pre-existing contracts are swept away as in the line of cases following:

Louisville & Nashville R. R. Co. v. *Garrett,* 231 U. S. 298;

Boston Beer Co. v. *Mass.,* 97 U. S. 33;

Home Building & Loan Ass'n v. *Blaisdell,* 290 U. S. 398.

It is not contended by the petitioner that her indefinite contract could not be the subject of regulation in the public interest in a manner similar to that recognized as regulative and not destructive under the doctrine of *Grand Trunk Western Railroad Company* v. *South Bend,* 227 U. S. 544, 554, 555, where this Court said:

> "The power to regulate implies the existence and not the destruction of the thing to be controlled."

In this connection there must be noted the broad grounds, representing almost every conceivable cause for which the public interest could possibly require the dismissal of the teacher provided under section 2 of the act. The enumeration of these grounds concludes with "or other good and just cause." Under this phrase any cause which injuriously affects or prevents successful teaching or the successful functioning of the school system and involving the con-

tinuance of the teacher in her employment could after notice and hearing be made the basis of her removal under the Act. Indeed the State Supreme Court in *Stiver* v. *State ex rel. Kent*, 1 N. E. Reporter (2d), 1006, 1008 has held:

> "other good and just cause" would include any cause which bears a reasonable relation to the teacher's "fitness or capacity to discharge the duties of his position."

It is plain that the only effect achieved by the enactment of the amendatory act beyond the destruction of existing contracts is the abolition of hearing and notice before dismissal and the renewed permissibility of dismissals for personal and political reasons. Certainly the provisions thus abolished are to the public advantage and cannot possibly be to the public disadvantage.

If desirable the retention or discontinuance of a teacher's employment attainable since the amendment was attainable before, and the only net result of the statute is the loss to the permanent teachers in the rural schools of their indefinite contracts. Thus analyzed the present case is clearly within *Treigle* v. *Acme Homestead Association*, 297 U. S. 189, and is arbitrary and oppressive. This case is not unlike *Adams* v. *Tanner*, 244 U. S. 590, 596, where it is said that an act "having no just relation to the protection of the public within the scope of legislative power must fail."

In *Adams* v. *Tanner* it was held the employment agency business could not be prohibited but could be regulated only since it was not shown that reasonable regulations would not prevent the evils complained of.

In *Panhandle Eastern Pipe Line Co.* v. *State Highway Commissioners*, 294 U. S. 613, 622, Mr. Justice McReynolds, speaking for the Court, said:

> "The police power of a state, while not susceptible of definition with circumstantial precision, must be

exercised within a limited ambit and is subordinate to constitutional limitations. It springs from the obligation of the state to protect its citizens and provide for the safety and good order of society. Under it there is no unrestricted authority to accomplish whatever the public may presently desire."

Petitioner's case seems to fall within the rule laid down in *Treigle* v. *Acme Homestead Association,* 297 U. S. 189, 196, 197, where speaking for the Court, Mr. Justice Roberts said:

"Such an interference with the right of contract cannot be justified by saying that in the public interest the operations of building associations may be controlled and regulated, or that in the same interest their charters may be amended. The statute merely attempts, for no discernible public purpose, the abrogation of contracts between members and the association lawful when made. This cannot be done under the guise of amending the charter powers of the corporation. Compare Bedford *v.* Eastern Bldg. & L. Asso., 181 U. S. 227, 45 L. Ed. 834, 21 S. Ct. 597." * * *

"Though the obligations of contracts must yield to a proper exercise of the police power, and vested rights cannot inhibit the proper exertion of the power, it must be exercised for an end which is in fact public, and the means adopted must be reasonably adapted to the accomplishment of that end and must not be arbitrary or oppressive."

In the recent case of *W. B. Worthen* v. *Thomas,* 292 U. S. 426, 431, 432, Chief Justice Hughes quotes with approval the observation of Justice Marshall in *Sturges* v. *Crownshield,* 4 Wheat. 122, 128:

"* * * it is not true that parties have in view only the property in possession, or that its obligation does not extend to future acquisitions. Industry, talents and integrity constitute a fund which is as confidently trusted as property itself. Future acquisitions are

therefore liable for contracts; and to release them from this liability impairs their obligation."

A school teacher contracts her skill and educational investment, represented in her training, and the State inviting her to place this investment at its service by the inducement of an indefinite contract is certainly in no better position to impair that contract than to impair an indeterminate franchise with a corporation. The present situation is clearly one which should receive thoughtful consideration to prevent the police power being perverted to its own destruction, as well as being applied in an arbitrary and oppressive manner. The improvement of the educational system by stabilizing the tenure of teachers through the instrumentality of an indefinite contract, cancellable only after hearing and notice and never for personal or political reasons, has been sought in Indiana and several other States. The means used can be assimilated to the indefinite franchise commonly employed to attract and secure investment in public utilities. In this field the contract clause has operated with efficacy as against over-extension of the police power. The State has not been considered to lack capacity to bind itself as against infringement of the contract clause. Under the decision of the Court below the same and through the same instrumentality of contract cannot be accomplished in the educational field. According to this opinion the incapacity of the State effectually prevents its being able to offer the security against its own change of mind necessary to induce the investment of pedagogical talent and special training for the instruction of its youth, although the State is not thus incapacitated through its sheer sovereign power to attract and secure the investment of money. Moreover the view taken below sustains the sudden, simultaneous destruction of the contracts of many thousand permanent teachers throughout Indiana, without any compensation for the contractual rights thus lost. The case is within the

observation of Justice Holmes quoted above as to the proper limits of the police power as contrasted with the contract clause and the right to compensation.

The issues here involved are of wide interest. Not only the future of the tenure contract method of procuring efficiency through stabilizing the employment of a teacher is directly involved, but the contractual pecuniary interests of permanent teachers of other states are likewise involved.

Also, the decision of this case will affect the decision of the Supreme Court of Wisconsin, rendered June 21, 1926, in *State ex rel. Nyberg* v. *Board of School Directors of Milwaukee,* 190 Wis. 570, where it was held that the Teachers' Tenure Act of that state created contract rights within the protection of the contract clause of the Constitution.

If the contract clause is to persist as an efficacious means of preventing the impairment of the obligations of a contract of a sovereign State as against the attempted exercise of the police power, the clearly recognized social value of the object to be achieved by a system of teachers' tenure contracts should turn the scale in favor of the operation of the contract clause in the present instance. Willis Constitutional Law, page 745, quoted by Judge Treanor in the dissenting opinion (R. 27).

(4) The court erred in holding that the Amendatory Act of 1933, construed by the court below to abrogate the petitioner's contract as a permanent teacher, was not in conflict with the contract clause of Article I, Section 10 of the Constitution of the United States.

The argument above under (3) fully covers this proposition.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory

powers, by granting a writ of certiorari, and thereafter reviewing and reversing said decision.

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APPENDIX A.

Indiana Teachers' Tenure Act 1927—Indiana Acts 1927, Page 259.

AN ACT defining teachers and permanent teachers, providing for their employment and release, and defining, and providing for the making and cancelling of, indefinite contracts.

(Approved March 8, 1927.)

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That any person who has served or who shall serve under contract as a teacher in any school corporation in the State of Indiana for five or more successive years, and who shall hereafter enter into a teacher's contract for further service with such corporation, shall thereupon become a permanent teacher of such school corporation. The term "teacher" as used in this section shall mean and include licensed public school teachers, supervisors and principals of all public school corporations, and licensed assistant superintendents and superintendents of school cities and towns. Upon the expiration of any contract between such school corporation and a permanent teacher, such contract shall be deemed to continue in effect for an indefinite period and shall be known as an indefinite contract. Such an indefinite contract shall remain in force unless succeeded by a new contract signed by both parties or unless it shall be cancelled as provided in section 2 of this act: Provided, That teachers' contracts shall provide for the annual determination of the date of the beginning and length of school terms by the school corporation: and, Provided, further, That teachers' contracts may contain provisions for the fixing of the amount of annual compensation from year to year by a salary schedule adopted by the school corporation and such schedule shall be deemed to be a part of such contract; and, Provided, further, That such schedule may be changed by such school corporation on or before May 1st of any year, such changes to become effective at the beginning of the following school year: Provided, That all teachers affected by such changes shall

be furnished with printed copies of such changed schedule within thirty days after its adoption.

SECTION 2. Any indefinite contract with a permanent teacher as defined in section 1 of this act may be cancelled only in the following manner: Not less than thirty days nor more than forty days before the consideration by any school corporation of the cancellation of any such contract, such teacher shall be notified in writing of the exact date, time when and place where such consideration is to take place; and such teacher shall be furnished a written statement of the reasons for such consideration, within five days after any written request for such statement; and such teacher shall, upon written request for a hearing, filed within fifteen days after the receipt by said teacher of notice of date, time and place of such consideration, be given such a hearing before the school board, in the case of cities and towns, and before the township trustee, in the case of townships; such hearing shall be held not less than five days after such request is filed and such teacher shall be given not less than five days' notice of the time and place of such hearing. Such teacher, at the hearing, shall have a right to a full statement of the reasons for the proposed cancellation of such contract, and shall have a right to be heard, to present the testimony of witnesses and other evidence bearing upon the reasons for the proposed cancellation of such contract. No such contract shall be cancelled until the date set for consideration of the cancellation of such contract; nor until after a hearing is held, if such hearing is requested by said teacher; nor until, in the case of teachers, supervisors, and principals, the city or town superintendents, in cities and towns, and the county superintendents, in townships and in cities and towns not having superintendents, shall have given the school corporation his recommendations thereon, and it shall be the duty of such superintendent to present such recommendations upon five days' written notice to him by such school corporation. Nothing contained in this section shall prevent the suspension from duty of any teacher pending a decision on the cancellation of such teacher's contract. Cancellation of an indefinite contract of a permanent teacher may be made for

incompetency, insubordination (which shall be deemed to mean wilful refusal to obey the school laws of this state or reasonable rules prescribed for the government of the public schools of such corporation), neglect of duty, immorality, justifiable decrease in the number of teaching positions or other good and just cause, but may not be made for political or personal reasons: Provided, That when the cause of cancellation of an indefinite contract is immorality or insubordination, as defined in this act, such cancellation shall go into effect at once: and, Provided, further, That when the cause of cancellation of an indefinite contract is not immorality or insubordination, as defined in this act, such cancellation shall go into effect at the end of the school term following such cancellation. The school board of any city or town, by a majority vote, evidenced by a signed statement in the minutes of the board, or the township trustee, by a written and signed statement recorded in his records, may cancel an indefinite contract with a teacher after compliance with the provisions of this section: Provided, That the decision of the school board shall be final: and, Provided, further, That the decision of the township trustee shall not become effective for ten days, during which time an appeal may be taken to the county superintendent, in which case the county superintendent shall investigate the case and make a final decision within five days.

SECTION 3. No teacher shall be appointed by any school corporation in Indiana, and no teacher shall become a permanent teacher in any such school corporation, until the superintendent, in the case of school cities and school towns, and the county superintendent, in the case of townships and school cities and towns not having superintendents, shall have made a report upon such teacher's preparation, experience, and license, and it shall be the duty of every such superintendent, within ten days after request, to make such report upon any person whom the school corporation is considering as an applicant: Provided, That nothing contained in this section shall be deemed to prevent the granting to any superintendent of additional authority in the selection and employment of

teachers either by law or by the rules or regulations of any school corporation.

SECTION 4. No permanent teacher shall be permitted to cancel his indefinite contract during the school term for which his said contract is in effect nor for a period of thirty (30) days previous to the beginning of such school term unless such cancellation is mutually agreed upon; such permanent teacher shall be permitted to cancel his indefinite contract at any other time by giving a five days' notice to the school corporation. Any permanent teacher cancelling his indefinite contract in any other manner than in this section provided shall be deemed guilty of unprofessional conduct and the state superintendent is hereby authorized to suspend the license of such teacher for a period of not exceeding one year.

SECTION 5. Any school corporation, upon written request, may grant leaves of absence, for periods not exceeding one year, to any permanent teacher for study or professional improvement or because of physical disability or sickness, subject to such rules and regulations governing leave of absence as may be adopted by such corporation: Provided, That without written request any school corporation may place a permanent teacher on leave of absence for periods of not exceeding one year because of physical or other disability or sickness: Provided, That such teacher shall have a right to a hearing on such unrequested leave of absence in accordance with the provisions for hearings contained in section 2 of this act.

SECTION 6. This act shall be construed as supplementary to an act of the general assembly, page 195, acts 1921, entitled, "An act concerning teachers' contracts and providing for the repeal of conflicting laws."

APPENDIX B.

The New Jersey Act (as Quoted in Phelps v. Board of Education of Town of West New York, 57 Sup. Ct. Rep. 483).

SECTION 1 (4 N. J. Comp. St. 1910). The service of all teachers, principals, supervising principals of the public schools in any school district of this state shall be during good behavior and efficiency, after the expiration of a period of employment of three consecutive years in that district, unless a shorter period is fixed by the employing board; * * * No principal or teacher shall be dismissed or subjected to reduction of salary in said school district except for inefficiency, incapacity, conduct unbecoming a teacher or other just cause, and after a written charge of the cause or causes shall have been preferred against him or her * * * and after the charge shall have been examined into and found true in fact by said Board of Education, upon reasonable notice to the person charged, who may be represented by counsel at the hearing. * * *

APPENDIX C.

Teachers' Contracts Required to be in Writing.

(Chapter 91, Sec. 1, p. 195 of the Acts of General Assembly of Indiana, 1921, Burns' Indiana Stat. Ann. 1933, Sec. 28-4304).

AN ACT concerning teachers' contracts and providing for the repeal of conflicting laws.

(S. 143. Approved March 7, 1921.)

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That all contracts hereafter made by and between teachers and school corporations shall be in writing; shall state the date of the beginning of the school term; the number of months in the school term; the total amount of the salary to be paid during the school year;

and the number of payments that shall be made during the school year; provided that in this act, a month shall mean not more than twenty school days.

APPENDIX D.

Teachers' Minimum Wage Act.

Chapter 56, Acts of 1920, Special Session, p. 194. (Burns' Ind. Stats. Ann. 1933, Section 28-4314).

AN ACT to amend an act to amend section 1 of an act entitled "An act to amend an act entitled 'an act to amend section 1 of an act entitled an act to classify and regulate the minimum wage of teachers in public schools', approved March 2, 1907, approved March 1, 1911, and to amend section 2 of an act entitled 'an act to classify and regulate the minimum wages of teachers in public schools', approved February 28, 1913, approved March 15, 1919."

(H. B. 553. Approved August 4, 1920.)

SECTION 1. Be it enacted by the general assembly of the State of Indiana, That section 1 of the above entitled act be amended to read as follows: Section 1. That the daily wages of teachers for teaching in the public schools of the state shall not be less in the case of beginning teachers, than an amount determined by multiplying four and one-fourth cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience for one school year of not less than six months, the daily wages shall be not less than an amount determined by multiplying four and three-fourths cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience of three or more school years of not less than six months each, the daily wages shall be not less than an amount determined by multiplying five and one-half cents by the general average given such teacher on his highest grade of license at the time of contracting. For teachers having had a successful experience of five or more school years of not

less than six months each, the daily wages shall be not less than an amount determined by multiplying six cents by the general average given such teacher on his highest grade of license at the time of contracting. All teachers now exempt from examination shall be paid, as daily wages for teaching in the public schools, not less than an amount determined by multiplying six and one-half cents by the general average of scholarship and success given such teacher: Provided, That the grade of scholarship accounted in each case be that given at the teacher's last examination, and that the grade of success accounted, be that of the teacher's term last preceding the date of contract: And Provided further, That two per cent shall be added to the teacher's general average scholarship and success for attending the county institute the full number of days, and that said two per cent shall be added to the average scholarship of beginning teachers: Provided further, That the minimum paid to any teacher in the common schools of this state shall not be less than $800 per school year.

Service of the above and foregoing petition for certiorari and brief in support thereof and receipt of a copy of each is hereby acknowledged and accepted at ——, this — day of ——, 1937.

——— ———,

Counsel for Respondent, Harry Brand,
Trustee of Chester School Township,
of Wabash County, Indiana.

Service of the above and foregoing printed copy of the record and the receipt and a copy thereof is hereby acknowledged and accepted at ——, this — day of ——, 1937.

——— ———,

Counsel for Respondent, Harry Brand,
Trustee of Chester School Township,
of Wabash County, Indiana.

Affidavit of Service.

UNITED STATES OF AMERICA,
District of Indiana,
State of Indiana, ss:

—— ——, first being duly sworn deposes and says that he is of lawful age and that on the — day of ——, 1937, he personally delivered to and served the above —— ——, counsel for the respondent Harry Brand, Trustee of Chester School Township of Wabash County, Indiana in the foregoing cause by delivering to and leaving with said counsel for said respondent a copy of petitioner's petition for writ of certiorari, petitioner's brief in support thereof and a printed copy of the record in said cause at ——, in Vigo County in said District.

—— ——.

Subscribed and sworn to before me the undersigned —— ——, at ——, in said District, County and State this — day of ——, 1937.

—— ——,
Notary Public.

My commission expires —— —, ——.